In the High Court of Uttaranchal, at

Nainital.

A.O. NO. 194/2005

1- Smt. Shella Devi W/o Late Bhagyan Lal
2- Km. Hassina (minor) D/o Late Bhagyan Lal
3- Km. Rabina (minor) D/o Late Bhagyan Lal
4- Km. Meena (minor) D/o Late Bhagyan Lal
(Appellant Nos. 2 to 4 through their natural guardian/mother Smt. Sheela Devi W/o Late Bhagyan Lal)
5- Smt. Basanti Devi W/o Darshan Lal
6- Darshan Lal S/o Bashantu
All R/o Village Gadholi Patti Dashgi,
Tehsil Dunda, District Uttarkashi ... Appellants.

Versus

1- Oriental Insurance Company Limited Rishikesh Branch, District Dehradun through its Branch Manager.
2- Indra Dutt Joshi S/o Jagat Ram Joshi
R/o Village Gadholi Patti Dashgi,
Tehsil Dunda, District Uttarkashi ...Respondents.

Sri Narayan Singh Negi, Advocate for the appellants.
Sri D.K. Sharma, learned counsel for the respondent.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 26-06-2006.

This Appeal from Order U/S 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 6-04-2005, passed by M.A.C.T./District Judge, Uttarkashi (hereinafter referred as the Tribunal'), in M.A.C.P. No. 2 of 2004, Smt. Shella Devi and others Vs. Indra Dutt Joshi and another,

thereby awarding compensation to the tune of Rs. 2,79,000/- along with interest @ 6% per annum from the date of presentation of the claim petition till the date of actual payment, payable by the Oriental Insurance Company.

2- The facts giving rise to this appeal are that the claimants/appellants filed a claim petition before the Tribunal for award of compensation of Rs. 20,14,328/- in lieu of the death of Bhagyan Lal in a motor accident. According to the claimants on 18-1-2004 Bhagyan Lal was travelling in Utility bearing registration No. U.S.07-A/1014 from Kumarkot for his destination to Kotdhaar. When the vehicle reached at Kilometer No.29 on Silkyara Bangaon Motor Road it fell in the deep ditch due to the rash and negligence of its driver. Due to this accident Bhagyan Lal died instantaneously at the spot itself. According to the claimants the deceased Bhagyan Lal at the time of accident was 23 years of age and he was a carpenter by profession and was earning Rs. 5000/- per month. The deceased used to spend Rs. 3,333/- per month at his family. It was also alleged that due to the death of Bhagyan Lal the family has reached the stage of starvation and there is no source of earning.

3- The owner-cum-driver of the Utility No. U.A.07-A/1014 has contested the claim petition by filing his W.S. alleging therein that exorbitant amount of compensation has been claimed. It was also alleged that the vehicle was being driven cautiously but due to some mechanical defect the accident has occurred. It was also pleaded in the W.S. that the offending vehicle at the time of accident was insured with Oriental Insurance Company and liability of compensation is of the insurer of the vehicle.

4- The O.P. Oriental Insurance Company filed W.S. alleging therein that highly excessive amount of

compensation has been claimed without any basis. It was also alleged that the claim petition has been filed with the collusion of the owner of the vehicle.

5- The Tribunal on the basis of pleadings of parties framed relevant issues in the claim petition. On behalf of the claimants Smt. Shella Devi has been produced as P.W.1, and Shanti Ram as P.W.2. Copies of insurance cover note, post mortem report, F.I.R., D.L., registration etc. have been brought on record.

6- The Tribunal on assessment of evidence on record allowed the claim petition for compensation of Rs. 2,79,000/- along with interest @ 6% per annum from the date of presentation of claim petition till the date of actual payment against the Oriental Insurance Company.

7- Being dissatisfied with the compensation awarded by the Tribunal concerned, the claimants have come up in appeal for enhancement of compensation.

8- We have heard the learned counsel for the parties and perused the record.

9- The only point involved in this appeal is whether the amount of compensation awarded in favour of the appellants/claimants is not in accordance with the evidence on record and as to whether the Tribunal has committed an error in awarding the amount of compensation to the appellants on a lesser side or not.

10- The evidence on record reveal that the deceased Bhagyan Lal was aged about 23 years at the time of the accident. As per the claim petition the deceased was a carpenter thereby earning Rs. 5000/- per month from his job. The claimants in the evidence have deposed that the deceased used to give a sum of Rs. 3,333/- per month for the house-hold expenses. P.W.1, Smt. Shella, who is the widow of the deceased has deposed that her husband used to earn Rs. 5,000/- per month and apart of this he used earn Rs. 2000/- per month from

agriculture etc. She has further deposed that her husband deceased Bhagyan Lal used to pay Rs. 4000/- per month for household expenses. But no cogent and reliable evidence has been adduced by the claimants in order to establish the actual income of the deceased. The Tribunal has rightly assessed the income of the deceased as Rs. 2000/- per month. We do not find any ground for interference in the assessment made by the Tribunal pertaining to the income of the deceased.

11- In case if the monthly income of the deceased is assessed as Rs. 2000/-, then the annual income of the deceased comes to Rs. 2000/- X 12= 24,000/-. Out of the aforesaid amount if the deceased would have invested 1/3rd of the same against his personal expenses, then the financial dependency of the claimants comes to Rs. 16,000/- per annum.

12- Keeping in view the age of the deceased a multiplier of 17 would be just and reasonable and we find that the Tribunal has not committed any illegality in adopting the multiplier of 17 in the instant case. After calculation the amount of compensation to be paid to the appellants comes to Rs. 2,72,000/-. The Tribunal apart of the aforesaid amount has awarded an additional amount of Rs. 2000/- under the head of cremation as well as an additional amount of Rs. 5000/- under the head of loss of love and affection. Thus the Tribunal has awarded a total sum of Rs. 2,79,000/- in favour of the claimants/appellants and we do not find any ground for interfering in the aforesaid amount of compensation awarded by the Tribunal.

13- As far as the rate of interest indicated in the impugned judgment and award dated 6-4-2005 is concerned, the same does not require any interference.

14- The appeal lacks merit and is liable to be dismissed.

15- Accordingly the appeal is dismissed. The judgment and award dated 6.4.2005 passed by MACT/ District Judge, Uttarkashi in MACP No. 2/2004 is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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